

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Ebel et al.	Conf. No.:	5270
Serial No.:	10/711,271	Art Unit:	3687
Filing Date:	09/07/04	Examiner:	Hayles, Ashford S.
Title:	TOTAL INVENTORY MANAGEMENT	Docket No.:	BUR920040129US1 (IBMB-0054)

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Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants respectfully request a panel of experienced examiners perform a detailed review of appealable issues for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. A Notice of Appeal has been filed with this Request.

Applicants submit that the above-identified application is not in condition for appeal because the Office has failed to establish rejections under 35 USC § 102(b). Claims 1-20 are pending and stand rejected. Applicants submit that these rejections are clearly not proper and without basis for the reasons stated below.

In the Final Office Action of August 1, 2008, claims 1-20 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Kurihara et al. (U.S. Pub. 2003/0171963), hereinafter “Kurihara”. Specifically, with respect to independent claims 1, 12 and 16, Applicants assert

Kurihara does not disclose, *inter alia*, “determining an excess inventory with consideration of a manufacturing limitation and an excess inventory without consideration of the *manufacturing limitation* for each analysis point[.]” (Claim 1, similarly in claims 12 and 16). The Office in dismissing this argument contends that Kurihara discloses demand fluctuations, *which the Office is construing to be a manufacturing limitation* (page 6, Office Action of August 1, 2008).

Applicants assert that demand fluctuations are not manufacturing limitations. A manufacturing limitation, as explained in the specification, is any limitation that delays the manufacturing of an inventory, e.g., governmental restraint or manufacturing capacity [Para 43]. Product demand fluctuation defined in Kurihara are changes in demand predictions including rising or falling changes over an extended period, cyclical fluctuations over a period of from 3 to 15 years, periodic fluctuations of which seasonal fluctuations are representative and other irregular fluctuations [0133]. Manufacturing limitations and demand fluctuations define different elements and are not interchangeable items. Thus, the Office has failed to show that Kurihara discloses every element of Applicants claimed invention.

In addition, Kurihara does not disclose, *inter alia*, “determining a trapped inventory based on a difference between the excess inventory with consideration of the manufacturing limitation and the excess inventory without consideration of the manufacturing limitation[.]” (Claim 1, similarly in claims 12 and 16). Step S13 of Kurihara discloses determining a target value of product inventory but the target value is based on the manufacturing planning and the delivery planning process. (See FIG. 3, S7 and S8.) That is, Kurihara does not determine a trapped inventory based on a difference between the excess inventory with consideration of the manufacturing limitation and the excess inventory without consideration of the manufacturing limitation. The Office cites Step S13 of Kurihara which computes product inventory targets by

subtracting the product inventory target value to accommodate demand fluctuations. Again, the Office conflates demand fluctuations with manufacturing limitations. This interpretation ignores the definition of demand fluctuation and manufacturing limitation as explained above.

To anticipate a claim the reference must teach each and every element of the claim. Kitahara does not disclose manufacturing limitations. Therefore, a proper anticipation rejection has not been provided by the Office.

In view of the foregoing, Kurihara does not anticipate the claimed subject matter. The dependent claims are believed allowable for the same reasons stated above, as well as for their own additional features. Accordingly, Applicants respectfully request withdrawal of the rejection.

Applicants respectfully submit that the Application as presented is in condition for allowance. Should the Examiner believe that anything further is necessary in order to place the application in better condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

/Carl F. Ruoff/

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